49 particularly of sections 25 and 26 apply to such acquisition to the exclusion of section 113 of the Singapore Improvement Ordinance. I also hold that when there is a reference to the Tribunal under section 42A(3) of the Singapore Improvement Ordinance the whole matter is in issue and the Tribunal in valuing the land and in determining the matter is bound to consider not merely any matter specifically appealed against but the whole question of compensation as it is the whole matter which is referred by the Board for the determination of the Tribunal. I hold that prices at previous forced sales and prices awarded or paid on similar compulsory acquisitions and also the prices awarded by the Collector in respect of adjacent properties in connection with this group of acquisitions can be taken into consideration by the Tribunal. Any special adaptability of the property for any purpose, e.g. as shophouses can be taken into consideration in so far as it affects market value. The appellant obtained a right to claim compensation for injurious affection under section 105 of the Singapore Improvement Ordinance on the notification of approval of the plan in 1932. As that right was not exercised in time the right to claim under that section has gone. The Tribunal has no power to extend the time. In a case like this Ordinance No. 49, section 25, subsection 1(b), (c), (d) and (e) must be considered in conjunction with section 105 of the Singapore Improvement Ordinance read along with sections 106 and 113 of that Ordinance. As injurious affection was suffered in 1932 and as no claim was then made compensation in respect of injurious affection is only claimable now under section 25, subsection (1)(d), if any injurious affection has been suffered over and above what could have been claimed in 1932 under section 105 of the Singapore Improvement Ordinance.

Award confirmed.

Solicitors: *Zehnder Bros.; Braddell Bros.*

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[183] F.M.S. REPORTS

PHOON CHONG v. PUBLIC PROSECUTOR

[A. Cr. J. (Whitley Ag. C.J. (S.S.), Howes and Aitken JJ.) March 23, 1936]

[Pahang Criminal Appeal No. 1 of 1936]

The Criminal Procedure Code (Cap. 6), s.197 — Retirement of assessors and consultation between them before giving their opinions — Opinion expressed by Judge in summing up the evidence.

Although section 197 of the Criminal Procedure Code (Cap. 6) does not state whether or not assessors should be allowed to retire, there is no reason why the Judge, in his discretion, should not allow them to do so and it may be advantageous and even desirable that assessors should have the opportunity of discussing the matter with one another.

Section 197, which allows the Judge to sum up the evidence for the prosecution and the defence to the assessors, must also be taken to empower the Judge to express his opinion on any part of the evidence, provided that he directs the assessors that they are not to be influenced unduly by his opinion; that they must come to their own personal conclusions; and that if either of them differs from the Judge in the view which he has expressed as to any part of the evidence, it is the view of the assessors which should prevail.

COURT OF APPEAL (CRIMINAL).

P. Storr for the appellant.

C. H. Whitton (Deputy Public Prosecutor) for the respondent.

Whitley Ag. C.J. (S.S.): The Court is of opinion that this appeal must be dismissed. We have listened with great interest to the able arguments put forward by Mr. Storr on behalf of the appellant, in particular to two points arising out of the wording of section 197 of the Criminal Procedure Code, dealing with the procedure at a trial with assessors which apparently have never been taken before.

The first point which he raised was that in section 197 there is nothing to provide for the retirement of the assessors or for consultation between them, and by reason of that fact, he contends that it is illegal for the assessors to be allowed to retire and confer at the conclusion of the case before giving their opinions. He pointed out that in that part of the Code which deals with procedure at trials by jury, special provision is made for the jury being allowed to retire, and he argues that because no such provision is made in the section which deals with the trial with assessors, it follows that the legislature in framing that section did not intend that the assessors should be allowed to retire. He relied upon the case of *King-Emperor* v. *Tribunal Reddi and others,* I.L.R. 24 Mad. 523. But it appears to us on considering the judgment in that case that the learned Judge was to a large extent expressing opinions which are *obiter.* The facts in that case as to the retirement of the assessor were entirely different from those in the case which we are now considering. In that case one assessor absented himself from proceedings with the permission of the Court every day in order to attend some funeral ceremonies, and when he came back he was allowed to sit as assessor again, and the notes of the proceedings which had taken place during his absence were read over to him. That case as Mr. Storr admits is different from the present one, but he contends that the principle laid down by the learned Judge in that case should be applied here.

We are of opinion that the view which should be taken is that which was taken by another Indian Court in a later case in India reported in XVI Cr. L.J. 717 (M) which is quoted in *Sohoni's* Criminal Procedure Code, 13th edn., at p. 735. The extract reads as follows:—

> "Is a consultation between the assessors allowable? We cannot find in the Code any provision authorising or forbidding the Judge to allow consultation between the assessors and although we are not prepared to decide that the Judge may not in his discretion do so, we follow the opinion of Bhashyam Ayyangar J., expressed in 24 M. 523 to the extent of holding that he is entitled to have before him each assessor's individual and independent opinion."

This Court takes the same view as regards what should be the procedure here, and although there is nothing specifically laid down in the section as to whether or not assessors should be allowed to retire, we can see no reason why the Judge in his discretion should not allow them to do so. We also agree that the Judge is entitled to have before him, after they

have retired, the individual and independent opinion of each assessor.

Mr. Storr contends that it is impossible to obtain from an assessor an individual or independent opinion after he has had the opportunity of consulting and discussing the matter with his brother assessor. We do not agree. It seems to us that very often it may [184] be advantageous and [184] even desirable that assessors should have the opportunity of discussing the matter with one another. Often one of the assessors is of one nationality and the other of another, and one of them being of the same race as a witness may be better able to appreciate some passage in his evidence than the other assessor who belongs to a different race. It is moreover a common experience in these Courts to find that notwithstanding the fact that assessors have retired they deliver differing opinions as to the guilt or innocence of the accused.

The second point which Mr. Storr took was that there is nothing in section 197 empowering the Judge in the course of his summing up to express his opinions upon any particular part of the evidence. Undoubtedly in this case the learned trial Judge in the course of his summing up did express his individual opinion on certain parts of the evidence.

The section says: "The Court may sum up the evidence for the prosecution and the defence"; that is all the section says with regard to summing up. We are of opinion that when the section says the Court may sum up the evidence for the prosecution and the defence, that must also give the Judge power to express his opinion on any part of the evidence, provided that he makes it quite clear to the assessors that they are not to be influenced unduly by his opinion on any particular point of the evidence, that they are, each and individually, to come to their own personal conclusion as to each part of the evidence, and that if either of them differs from the Judge in the view which he has expressed as to any part of the evidence, it is the view of the assessor which should prevail and not that of the Judge.

The learned trial Judge put this very clearly to the assessors, and I think that they cannot have failed to realise that if they differed from him in any opinion which he expressed it was their opinion which was required. What he said was this —

> "On the question of fact, you alone are the judges in determining your own verdict. If in going through the evidence I express my own opinion as to the credibility of the witnesses, or on any fact, you are not in any way bound to follow my view. You must decide for yourself. It is only on the question of law that you are bound to accept what I tell you."

It seems to the Court that this was a full and very proper direction to the assessor on this particular point, and provided that a direction such as this is given to the assessors, it seems to us eminently proper that, when he thinks fit, the trial Judge should express his own opinion on any question of fact.

The other grounds upon which this appeal is based are directed to certain matters of procedure and to certain alleged misdirections on the evidence contained in the summing up by the learned trial Judge. The Court is of opinion that none of these alleged misdirections were such as would entitle the Court to interfere with the verdict of the Court below.

It has been laid down in England in a number of cases (the leading case being *R.* v. *Max Cohen and Leonard Nelson Bateman,* 2 Cr. App. R. 197), that a misdirection as to evidence, to be of any avail to the appellant, must be such that it is reasonably probable that the jury would not have returned the verdict that they did, had it not been for such misdirections. The same principle is applicable to the opinion of an assessor in this country.

One last point remains upon which the Court should, we think, express its opinion, and that is on the question of the learned trial Judge having recalled the Police Inspector to rebut certain statements made by the accused in the course of his evidence as to what took place in the proceedings in the Magistrate's Court. It seems to us that the learned trial Judge acted quite properly and was within his rights in doing as he did and that no adverse criticism can be directed against him as to his conduct at the trial in that particular respect.

I am reminded by my brothor Howes that criticism was also directed against the learned Judge's summing up as regards what he said on the question of *alibi.* We are of opinion that the learned Judge was entitled to draw the attention of the assessors to the fact that the *alibi* had not been set up at the earliest possible moment especially as in so doing he added, "I do not want you to draw any inference unfavourable to the accused from the fact that he did not raise the *alibi* at the preliminary enquiry or to think that it must necessarily mean that he is untruthful." We are unable to see that the way in which the learned Judge dealt with this matter in the summing up was in any way unfair to the appellant or that this can be held to amount to a misdirection.

For these reasons, although we appreciate the able and careful way in which Mr. Storr, for the appellant, argued his points before us, we are of opinion that there is no substance in them, and that this appeal must be dismissed.

Howes and **Aitken JJ.** concurred.

Appeal dismissed.

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[185] JOHORE REPORTS [185]

IN THE MATTER OF SECTION 22 OF THE LAND ENACTMENT
THE COLLECTOR OF LAND REVENUE, KLUANG v. SOMASUNDARAM CHETTIAR & ANOR.

[O.C.J. (Mills J.) June 16, 1936]
[Johore Bahru Land Reference No. 1 of 1936]

Land registration — Transfer of charge — Johore Land Enactment, No. 1 (Revised Edition), s.47.

A transfer of a charge on land held by Entry in the Mukim Register under Part III of the Land Enactment is not registrable under this Enactment.

Obiter, the Commissioner should refuse to register any transactions other than those for which express provision is made in Part V of the Enactment.